

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,821
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision that she is ineligible for the fuel assistance program based on an application filed past the November 30, 1998 deadline.

FINDINGS OF FACT

1. The petitioner, after being turned down for fuel assistance on an earlier application¹, filed a second application for assistance on December 20, 1998.

2. That application was denied on January 6, 1999, because the petitioner did not file "during the specified application period, July 15 through September 2". The petitioner was advised that "after December 1, no exceptions to the application period are allowed".

3. The petitioner appealed that denial on January 12, 1999. She says that she was told by the fuel chief when her first application was originally denied (September or October of 1998) that she could reapply if her situation changed. Her situation has changed because one of her roommates moved out in December and her ANFC grant was

¹ The petitioner filed an appeal of her earlier denial which is still under consideration.

increased to cover her larger shelter costs.²

4. The petitioner admits that the fuel chief did mention to her that the application deadline was November 30, 1998, but she thought that she might be able to get an exception to that deadline if her circumstances changed thereafter. She could not point to any specific information given to her which would have led her to believe that.

5. The first application, which the petitioner filled out July 29, 1998 and the second application, which she filled out on December 20, 1998 both contained this language on the fourth page:

The time to apply is from July 15 through August 31. If you miss the application period you may apply until November 30, but you must have a good reason for applying late. If you apply after November 30, you will be denied; there are no exceptions. If August 31 or November 30 is a Saturday or Sunday, you have until the next work day to apply.

6. It cannot be concluded based on the above facts that the petitioner was misled by the Department as to the deadline for filing a fuel assistance application.

² The Department represented at hearing that even if the petitioner's application had been timely she would have still been over income because the income of her remaining roommate had to be included in calculating her eligibility. The Department's contention is not dispositive of this case because that is the same issue that is currently on appeal for her first denial.

ORDER

The decision of the Department denying the December 20, 1998, application for failure to timely file is affirmed.

REASONS

The statute which established the home heating fuel assistance program specifically requires a closed application period:

(a) In order to make a timely determination of benefit levels, there shall be an application period during which all beneficiaries shall apply for home heating fuel assistance for the ensuing heating season. The application period shall be from July 15 through August 31 beginning with the 1997-1998 heating season and each heating season thereafter. . . .

(b) The secretary may accept applications after the application period has closed only in unanticipated circumstances or for good cause shown, such as loss of employment of the applicant.

33 V.S.A. § 2606

The above statute mandates an application period and gives authority to the secretary (of human services) to adopt regulations allowing for late applications in limited circumstances. Pursuant to this authority, the Department has adopted the following regulations:

2902.1 Application Period

For the 1996-97 heating season (from November 1, 1995 through March 1997), the application period will begin on August 15, 1996, and close on September 30, 1996. For subsequent heating seasons the application period will begin on July 15 and close on August 31. Applicants must submit applications during the specified application period in order to have their eligibility determined for the Fuel Program for the

ensuing heating season. Applications must be received by the last day of the application period by the Office of Home Heating Fuel Assistance, or by any of the twelve Department of Social Welfare's District Offices; if mailed the applications must be postmarked no later than the last day of the application period. . . .

2902.2 Exceptions to the Application Period

Applications received after the close of the application period but no later than November 30, may be found eligible only under one of the circumstances listed in this section. . . .

While the statute itself does not express a deadline for exceptions there is nothing which would indicate that the secretary does not have the authority to place a deadline on the exception period. The nature of the program, which requires a calculation of benefit payments based on the number of persons participating, makes it essential to have a fixed number of participants by a certain date. See V.S.A. § 2605(c).

The scheme adopted by the Department allows persons who applied and were found eligible in the regular application period to get benefits from November 1 through March 31, (W.A.M. § 2902.1) and those who are found eligible during the late period to receive benefits from January 1 through March 31. (W.A.M. § 2902.2) Benefit checks are made out to fuel suppliers twice, once in November, which amount is calculated from the initial eligibility pool, and once in February, which benefit is calculated with those who were found eligible in the late exception period. (W.A.M. §

2907.1(a)). The Department must have an end period on "exceptions" in order to calculate the February payments. It cannot be found unreasonable for the secretary to have adopted a three-month long exception period extending to the end of the November.

In this case the petitioner knew or should have known based upon prior conversations with the fuel chief and written notice of the rules contained in her first application that there was a final date for application. Any confusion she may have experienced in this regard cannot be attributed to the Department.

The petitioner should be aware that there is an emergency fuel program available for those who could not be found eligible under the regular program and she is encouraged to apply for that if she has no fuel. Nothing in this decision is meant to vitiate any of the rights the petitioner may have based upon her first, and still pending, appeal of her initial denial.

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